

BELTON E. HALL

IBLA 77-533

Decided January 18, 1978

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting for lateness the attempted filings of 27 notices of mineral claim location. CA MC 72 et al.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment

Owners of unpatented mining claims located after October 21, 1977, must file a copy of the official record of the notice of location or certificate of location with the appropriate State Office of the Bureau of Land Management within 90 days of the date of location notwithstanding that the filing would be required prior to the promulgation of regulations implementing sec. 314 of the Federal Land Policy and Management Act of 1976.

2. Notice: Generally -- Notice: Courtesy Notice

A mining claimant required by the Federal Land Policy and Management Act of 1976 and its implementing regulations to file a notice of location with the Bureau of Land Management, may not justify a late filing by the Bureau of Land Management's failure timely to notify the claimant of the requirement.

3. Estoppel -- Federal Employees and Officers: Authority to Bind Government

The general rule is that reliance on erroneous or incomplete information provided by

Federal employees cannot create any rights not authorized by law.

APPEARANCES: Belton E. Hall, pro se.

# OPINION BY ADMINISTRATIVE JUDGE RITVO

Belton E. Hall appeals from a decision of the California State Office, Bureau of Land Management (BLM), rejecting 27 notices of mining claim location, 1/ which he attempted to file pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), section 314(b), 43 U.S.C. § 1744(b) (1977). BLM based its rejection on the fact that the notices were received 5 days after the statutory 90-day deadline for filing had expired. 2/ Appellant located his claims on

1/ Involved are the following claims located in secs. 22-27, T. 27 S., R. 35 E., Mount Diablo meridian, Kern County, California:

<u>Lode Mining Claim</u>	<u>Kern County Records</u>	<u>Case Number</u>
<u>Book 4989</u>		
Cheryl Group No. 1	Page 2404	CA MC 72
Cheryl Group No. 2	Page 2405	CA MC 74
Cheryl Group No. 3	Page 2406	CA MC 73
Cheryl Group No. 4	Page 2407	CA MC 75
Cheryl Group No. 5	Page 2408	CA MC 76
Cheryl Group No. 7	Page 2409	CA MC 77
Cheryl Group No. 13	Page 2410	CA MC 78
Cheryl Group No. 14	Page 2411	CA MC 79
Cheryl Group No. 15	Page 2412	CA MC 80
Cheryl Group No. 16	Page 2413	CA MC 109
Cheryl Group No. 17	Page 2414	CA MC 81
Cheryl Group No. 22	Page 2415	CA MC 82
Cheryl Group No. 23	Page 2416	CA MC 83
Cheryl Group No. 24	Page 2417	CA MC 84
Cheryl Group No. 27	Page 2418	CA MC 85
Cheryl Group No. 28	Page 2419	CA MC 86
Cheryl Group No. 29	Page 2420	CA MC 87
Cheryl Group No. 30	Page 2421	CA MC 88
Cheryl Group No. 31	Page 2422	CA MC 89
Cheryl Group No. 55	Page 2423	CA MC 90
Cheryl Group No. 62	Page 2424	CA MC 91
Cheryl Group No. 65	Page 2425	CA MC 92
Cheryl Group No. 66	Page 2426	CA MC 93
Cheryl Group No. 73	Page 2427	CA MC 94
Cheryl Group No. 74	Page 2428	CA MC 95
Cheryl Group No. 75	Page 2429	CA MC 96
Cheryl Group No. 104	Page 2430	CA MC 97

2/ Our independent computation, however, indicates that the actual interval was 6 days rather than 5. We will employ our own computation throughout the remainder of this opinion.

October 22, 1976. Section 314(b), supra, provides that owners of unpatented mining claims located after FLPMA's date of approval (October 21, 1976), "shall, within 90 days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location." Subsection (c) of this section further provides that "the failure to file such instruments \* \* \* shall be deemed conclusively to constitute an abandonment of the mining claim \* \* \* by the owner."

Appellant took no cognizance of the 90-day requirement until the 91st day, January 21, 1977, at which time he states he received a letter from BLM notifying him that mining claimants were required to file certain documents with BLM. <sup>3/</sup> As Appellant received the letter on a Friday afternoon, he was unable to contact BLM officials until Monday, January 24. That afternoon, Appellant telephoned Walter F. Holmes, Branch Chief, Lands and Minerals, at the BLM California State Office.

The record contains contradictory accounts of the conversation between Appellant and Holmes. Appellant's statement of reasons recounts: "Mr. Holmes told me that the Bureau of Land Management had been late in getting notices out to claim holders and that our claims would be accepted." (Emphasis in the original.)

Holmes' contemporaneous memorandum of the conversation, however, records his advice to Appellant as follows: "The Department is considering a number of procedures to extend the period of filing. Suggest he [Appellant] file his claims even tho late. If, the time period is changed or extended he can then be given the benefits."

Appellant filed his 27 claims on January 26, 1977. On July 19, 1977, he inquired of BLM what fees he would have to remit in connection with his filing. BLM responded that the 27 notices of location had been rejected for lateness. Notice of appeal to the Board was received on August 8, 1977, and a statement of reasons received on September 9.

At the outset, Appellant inferentially raises the question of whether FLPMA's 90-day deadline should be strictly enforced immediately after passage of the Act. FLPMA's purpose, argues Appellant, is to record mining claims -- not to create unnecessary hardships for claimants. In other words, Appellant asserts that strict enforcement of the deadline should have been deferred until, for example, final regulations under the statutory provision had been promulgated.

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<sup>3/</sup> The letter bears the date January 12, 1977.

[1] This argument has been previously considered and rejected, Southwest Exploration Co., IBLA 77-550; Effect of Failure to Record Timely Under Section 314(b), Federal Land Policy and Management Act of 1976, M-36889 (May 17, 1977). The statutory provision, neither on its face, nor in its legislative history, creates any exceptions to enforcement of the 90-day deadline. Absent such exceptions, the deadline must be enforced. <sup>4/</sup>

Appellant next raises the issue of whether estoppel against the Government exempts him from operation of the deadline. His argument has two branches. First, Appellant maintains that BLM erred in failing timely to notify him of the filing requirement; second, Appellant claims that BLM, through its officer, Walter F. Holmes, misled him to his financial detriment into believing that BLM would cure the late filings.

These arguments fly in the face of the long established principle that citizens are presumed to know the law. See, e.g., Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Wesley Warnock, 17 IBLA 338 (1974); James V. Orbe, 16 IBLA 363 (1974); Ross I. Gallen, 15 IBLA 86 (1974). We see no reason to depart from this principle in the present case.

[2] Applying the accepted principle, leads us to reject Appellant's first contention. Failure to publicize the existence of a statute is at best a neglect of duty for which no remedy lies. U.S. Immigration and Naturalization Service v. Hibi, 414 U.S. 5, 8 (1973); cf. Arthur W. Boone, 32 IBLA 133 (1977); Richard V. Bowman, 19 IBLA 261 (1975). There was, however, no lack of publicity concerning the recording requirements. In fact, proposed regulations had been published on December 10, 1976, in the Federal Register and had elicited extensive comments. 41 FR 54084.

[3] With respect to Appellant's second contention, the general rule is that reliance on erroneous or incomplete information provided

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<sup>4/</sup> Congress seems to have anticipated a certain harshness in the operation of section 314 on mining claimants who locate after the date of FLPMA's approval. Claimants locating prior to October 21, 1976, enjoy a full 3-year period in which to file, while those locating after that date have only 90 days. Had Congress desired a more gradual imposition of the requirement, it could have so provided. Congress, of course, has the power to mitigate any harsh results, such as in the present case, through corrective legislation. Furthermore, as long as the land is open to location and rights of third parties have not intervened, Appellant may relocate his claims and refile.

by Federal employees cannot create any rights not authorized by law. Federal Crop Insurance Corp. v. Merrill, *supra*; Utah Power and Light Co. v. U.S., 243 U.S. 389, 409 (1917); Goldberg v. Weinberger, 546 F.2d 477 (2nd Cir.), *cert. denied*, *sub nom.* Goldberg v. Califano, 431 U.S. 937 (1977); Byrne Organization, Inc. v. U.S., 287 F.2d 582, 587 (Ct. Cl. 1961); Mark W. Boone, 33 IBLA 32 (1977); Verner F. Sorenson, 32 IBLA 341 (1977); W. R. C. Croley, 32 IBLA 5 (1977); Estate of Malcolm N. McKinnon, 31 IBLA 290 (1977); 43 CFR 1810.3(c). *Cf.* California Pacific Bank v. Small Business Administration, 557 F.2d 218 (9th Cir. 1977).

If Appellant had conferred with BLM officials prior to expiration of the 90-day limit and had withheld his filing for that reason, he would have raised a more serious objection to applying the general rule than he does. *See U.S. v. Wharton*, 514 F.2d 406 (9th Cir. 1975), and cases cited. The record shows, however, that by the time Appellant conferred with BLM, the time for filing had expired, and, indeed, Appellant was apprised of that fact.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo  
Administrative Judge

We concur:

Joseph W. Goss  
Administrative Judge

Frederick Fishman  
Administrative Judge

